

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1585 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DURGASHANKAR DEVSHANKAR DAVE

Versus

KANTILAL MOHANLAL PATEL

Appearance:

MR PRASHANT DESAI for Petitioner
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/09/2000

ORAL JUDGEMENT

1. This is a revision application u/s 29[2] of the Bombay Rent Act at the instance of the original defendant - tenant, who was sued by the respondent - plaintiff landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The respondent - plaintiff - landlord sued the defendant - tenant for a decree of eviction on the ground that (1) the landlord reasonably and bonafide required the suit premises for his own use and occupation, and (2) that the tenant was in arrears of rent for more than six months, and was not ready and willing to pay the rent.

3. The trial Court, after considering the pleadings of the parties and the evidence led on the basis of the issues framed, came to the conclusion that the plaintiff - landlord has failed to establish his reasonable and bonafide requirements, and had also failed to prove that the tenant was in arrears of rent for more than six months and was not ready and willing to pay the rent. The trial court therefore dismissed the suit of the landlord on both the grounds.

4. The landlord thereupon filed an appeal u/s 29[1] of the Bombay Rent Act. It appears that the landlord had not challenged the finding of the trial Court as regards the reasonable and bonafide requirement of the landlord, since the same has neither been discussed nor dealt with by the lower appellate Court. It appears that this was not pressed before the lower appellate Court.

4.1 The lower appellate court however reversed the finding of the trial Court on the question of arrears of rent of more than six months. The lower appellate Court considered the application of section 12[3][a] of the Bombay Rent Act, but did not apply the said provision to the facts of the case, nor gave any reason whatsoever for not applying the same. The lower appellate Court however applied the provision of section 12[3][b] of the Rent Act, and on the facts of the case, found that the tenant had failed to make regular deposits in Court, and that therefore, he had failed to meet the requisite conditions stipulated in the said section, and had therefore, lost the protection of the statute. The lower appellate Court therefore passed a decree of eviction against the defendant tenant on this ground.

5. It is under these circumstances that the petitioner - tenant has preferred the present revision u/s 29[2] of the Bombay Rent Act.

6. Before proceeding with the merits of the matter, it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising u/s 29[2] of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. v/s

Patel Mohanlal Muljibhai [1998(2) GLH 736] = AIR 1988 SC 3325, while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai v/s Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. Only a few salient features require to be noted.

7.1 The landlord had issued the suit notice at exh.35 on 7th June 1977. The tenant had replied to the same by his reply exh.36 dated 30th June 1977. Although the reply was given within 30 days, it is significant to note that the said reply did not contain any contention or dispute pertaining to standard rent. It is well settled law that a dispute as to standard rent can be raised by a tenant either by way of filing an independent application u/s 11[1] or 11[3] of the Rent Act, or by raising a dispute as to standard rent in his reply to the statutory notice of the landlord, provided such dispute is raised within 30 days of the suit notice. If such a dispute is raised within 30 days of the suit notice, it will take the case out of the purview of section 12[3][a], and in which case, section 12[3][b] of the Act would apply. However, where no such dispute is raised, section 12[3][a] would apply. On the facts of the present case, the lower appellate Court has considered this aspect in para 25 of the judgement. The finding of fact recorded is to the effect that even according to the defendant, Rs.45=00 per month was the standard rent, in respect of which, there is no dispute, and so far as the arrears is concerned, the arrears were of more than six months. It is found that the tenant has neither paid nor tendered the amount of arrears to the landlord within one month of the suit notice and even after the filing of the suit, has not cared to deposit the same regularly. In short, the lower appellate court has simultaneously considered the provisions of section 12[3][a] and 12[3][b] of the Act, without ruling out the application of section 12[3][a].

7.2 Once it is found that the tenant is in arrears of

more than six months of rent, and that there is no dispute as regards the standard rent, and a finding is recorded that the tenant has neglected to make payment of such arrears within one month of service of the statutory notice upon him, section 12[3][a] applies with full force, and the Court has thereafter no discretion in the matter and a decree of eviction must follow.

7.3 In the premises aforesaid, the lower appellate Court ought not to have proceeded to consider the application of section 12[3][b] unless it had recorded a finding supported by reasons that section 12[3][a] would not apply. Since I find on the facts of the case that section 12[3][a] of the Act would apply, the decree for eviction passed against the tenant is fully justified under section 12[3][a] of the Act. It is also, on the facts, justified even if based on the consideration of section 12[3][b] of the Act.

8. Even on examination of the case u/s 12[3][b], it is found that the lower appellate Court was justified in recording a finding on the facts of the case that the tenant would not be entitled to the protection of even section 12[3][b] of the Act, inasmuch as he has not deposited the rent regularly in Court.

9. In the premises aforesaid, the impugned judgement and decree of the lower appellate Court is eminently reasonable and sustainable, and is required to be upheld. I therefore find no substance in the present revision application, and the same is accordingly dismissed with no orders as to costs. Rule discharged. Interim relief stands vacated.

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